IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.3847 of 1999

Between:

Mohd. Abdul Nabee, S/o. Abdul Rasheed, 35 years,
Tirumalagiri Branch, Hyderabad.

...PETITIONER

AND

1. The General Manager (D & PB), State Bank of India, Local Head Office, Hyderabad – 500 095.
2. The Assistant General Manager, State Bank of India, Central Office, Hyderabad.

…RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or a direction or an appropriate Writ more particularly one in the nature of Writ of Certiorari call for the records leading to the issue of the impugned proceedings No.GM(D&PB)/Per/No.234, dated 26.12.1998 and Memo No.GM(D&DB)/Per/No.2118, dated 04.01.1999 of the 1st respondent and to quash the same by holding them as arbitrary, illegal, unjustified, discriminatory and violative of Articles 14, 16, 21 and 311 (2) of the Constitution of India with a direction to the respondents to reinstate the petitioner into service with all consequential benefits such as treating the period of his absence from 01.06.1992 to 07.05.1995 as leave to which he is eligible and the attendant benefits of Pay & Allowances, Seniority, etc., as if the impugned orders of termination dated 05.12.1994 were never passed.

Counsel for the Petitioner: MR.S.GOPALA RAO

Counsel for the Respondents: MR.K.SRINIVASAMURTHY, Standing Counsel for State Bank of India

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.3847 of 1999

ORDER:

Heard Sri G.Gopala Rao, the learned counsel appearing for the petitioner and Sri K.Srinivasa Murthy, the learned Standing Counsel for the respondents.

The petitioner, who has been working as an employee in the capacity as a clerk with the respondent-bank filed this Writ Petition, *inter alia*, seeking to assail the initial orders of the termination dated 05.12.1994 as confirmed in the appeal by the orders dated 26.12.1998, as bad, illegal and void.

The facts in brief are that the petitioner had joined duty as a clerk on 29.12.1987. However, according to him, he fell ill from 01.06.1992 to 08.05.1995 and was under medical treatment during the above period. Thereafter, having regard to the petitioner's absence, the respondents have taken his case to terminate his service as per the orders dated 05.12.1994 mainly on the ground of voluntary abandonment of service.

As against the said orders, the petitioner had filed a regular appeal contending *inter alia* various grounds to the effect that in fact he had send various

applications along with medical certificates and in spite of the same, the matter remained unconsidered and therefore, the respondents have treated his absence as unauthorized and also abandonment of service. In the meanwhile, the petitioner also filed a Writ Petition No.28941 of 1998, which was disposed of on 20.10.1998, directing the respondents to dispose of the proceedings at the earliest. Now, the case of the petitioner is that, in the appeal, the first respondent issued a telegram on 23.12.1998 to the petitioner's counsel fixing the date of hearing on 26.12.1998 and asking upon him to produce the petitioner in person at the time of the said hearing, whereupon, the petitioner's counsel intimated the first respondent to the fact that in view of the very short time granted, it is very difficult to contact the party and make him appear on the said date of hearing. In spite of the same, without giving proper opportunity to the petitioner's counsel and in his absence, the appeal was dismissed on 26.12.1998, without going into the reasons or finding the merits but proceeding on the basis that in spite of the service of notice through telegram, there is no proper presence of the petitioner. Subsequently, the petitioner himself presented before the first respondent on 29.12.1998 pointing out various difficulties, but his request was rejected as per the orders dated 04.01.1999 and reconfirmed the orders passed on 26.12.1998.

Sri G.Gopala Rao, the learned counsel appearing for the petitioner submits that having regard to the fact that the petitioner was suffering from illness and he was being under medical treatment, which is supported by various medical certificates produced before the respondents herein, it cannot be said that there is any intentional absence or any voluntary abandonment of service on the part of the

petitioner. Though the petitioner sent applications and medical certificates, they were not given any credence. Further, it was also pointed out that in view of the enmity of the petitioner with the local postman, there was no proper and due service of the papers from both ends, which has resulted possibly to the impugned proceedings. Therefore, the petitioner cannot be blamed and the very main ground of termination of service without appropriate notice and without conducting any enquiry into the allegations as made against him is totally vitiated and liable to be set aside.

Sri S.Krishna Murthy, the learned Standing Counsel appearing on behalf of the respondents sought to sustain the impugned action on the ground that they were not present at the time of hearing of the appeal. Further, even on merits, the petitioner continued being absent from 01.06.1992 to 08.05.1995, which is not only too long but is wholly unauthorized and unexplained. Further, the petitioner has not come out with any valid reasons in support of his contention. Therefore, there are no merits in the claim and the same is liable to be rejected.

Considering the submissions from both sides and also on perusal of the material, the question which falls for consideration is as to whether the action of the respondents herein in terminating the petitioner from service on the ground of voluntary abandonment of service is justified and also as to whether the disposal of the appeal in the absence of the petitioner without going through the merits is sustainable?

There is no dispute to the fact that the petitioner has been in service of the respondents herein and he was admittedly absent for the aforesaid period namely

from 01.06.1992 to 08.05.1995 which has resulted, as submitted by the standing counsel for the respondents herein, into the orders of termination on 05.12.1994 treating such absence as a voluntary abandonment of service. The case of the petitioner is that he was not well and fell sick and he was being treated by the doctors and accordingly, he had submitted the medical certificates along with the applications repeatedly at various intervals. In spite of the same, they were not considered. Therefore, it is his case that the petitioner has a justifiable cause for his absence and therefore, it cannot be said that there is any abandonment of service, much less, a voluntary one. Further, it is also pointed out that in the appeal, there was no proper opportunity given and no reasons were also given while dismissing the same.

Before going into the first question as aforesaid, it is relevant to take note of the second question at this juncture. There is no dispute to the fact that it is only subsequent to the orders passed by this Court in W.P.No.28941 of 1998 as per the orders dated 20.10.1998, the respondents have taken up steps to dispose of the appeal and instead of giving notice in the normal course, the respondents have chosen to give notice by way of a telegram on 23.12.1998, fixing the date of hearing as on 26.12.1998. Apparently, such intimation is wholly unjustified especially in view of the short gap in between the date of the telegram and the date of hearing. Further, there is also no justification as to why the said telegram should be given only to the petitioner's counsel asking him to produce the petitioner, in person, at the time of hearing the appeal. In fact the counsel's representation is only in the capacity of an agent but not in person. Necessarily and under the normal circumstances,

notice ought to have been given to the petitioner in person directly for his presence, if at all any such presence is required. Further, even on a reading of the impugned order, it clearly shows that the appellate authority has not gone into merits at all except reiterating the factum of issuance of notice and absence of the petitioner from his service. Even, there is also no discussion in regard to the various objections and the grounds as raised by the petitioner in the grounds of appeal.

Apart from the fact that the order is laconic, it also does not give any reason as against each of the grounds or pleas as raised by the petitioner nor there is any say in regard to the reason with which the petitioner has come out explaining his absence i.e., the illness as supported by the medical certificates. There is also no finding as to whether the petitioner's application and the medical certificates as alleged to have been sent by him were received or not and if so received, the consequential action taken there of, are the matters which require fresh consideration on merits in detail, with all the reasons in support of the appeal as the appeal is only a continuation of original proceedings and all the facts have to be reconsidered afresh in relation to the findings or reasons as given by the appellate authority. Even the subsequent order passed by the first respondent when the petitioner himself appeared, also does not give any valid reasons, much less, in regard to the various pleas as raised by the petitioner in the appeal. Absolutely there is no justification on the part of the appellate authority in not providing proper opportunity to the petitioner herein and also non-consideration of the case in detail on merits with further reasons in support of their action in terminating the petitioner from his service. In view of the same, the matter requires to be reconsidered at the

stage of appeal. In view of the finding given in the second question, it is not necessary to go into the first question since the same will be the subject matter of the appeal.

Therefore, in view of the above, the Writ Petition is allowed. The impugned orders dated 26.12.1998 and 04.01.1999 passed by the respondents herein are set aside and the matter is remitted to the appellate authority for fresh disposal on merits, in accordance with law, after giving due notice and opportunity of hearing to the petitioner as well as his counsel. The appellate authority shall dispose of the appeal within a period of two months from the date of receipt of a copy of this order.

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(B.PRAKASH RAO, J)

2nd February 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the second day of February 2005.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The General Manager (D & PB), State Bank of India, Local Head Office, Hyderabad – 500 095.
2. The Assistant General Manager, State Bank of India, Central Office, Hyderabad.
3. Two CD copies.